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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/890,339

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Peter Jungblut

028622-0108

1997

7590  
Stephen A Bent  
Foley & Lardner  
Suite 500  
3000 K Street NW  
Washington, DC 20007-5109

12/09/2009

EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/890,339	<b>Applicant(s)</b> JUNGBLUT ET AL.	
	<b>Examiner</b> Rodney P. Swartz, Ph.D.	<b>Art Unit</b> 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 44,45,48,52,54,56,57 and 63-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44,48,50-52,56,57,63,64,66 and 67 is/are allowed.
- 6) ☒ Claim(s) 54 is/are rejected.
- 7) ☒ Claim(s) 45,49,65 and 68 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 21 August 2009, is acknowledged. Claims 44, 48, 49, 50, 54, 56, 57, 64, 65, 67 and 68 have been amended. Claims 53 and 55 have been cancelled.
2. Claims 44, 45, 48-52, 54, 56, 57 and 63-68 are pending and under consideration.

### **Rejections Moot or Withdrawn**

3. The rejection of claims 53 and 55 under 35 U.S.C. 112, second paragraph, as being indefinite for "a combination thereof", is moot in light of the cancellation of the claims.
4. The rejection of claims 44, 45, 48-50, 52, 54, 56 and 57 under 35 U.S.C. 112, second paragraph, as being indefinite for "a combination thereof", is withdrawn in light of the amendment of the claims.
5. The rejection of claim 48 under 35 U.S.C. 112, second paragraph, as being indefinite for "optionally", is withdrawn in light of the amendment of the claim.
6. The rejection of claim 50 under 35 U.S.C. 112, second paragraph, as being indefinite for "optionally", is withdrawn in light of the amendment of the claim.
7. The rejection of claim 54 under 35 U.S.C. 112, second paragraph, as being indefinite for "types of disease", is withdrawn in light of the amendment of the claim.
8. The rejection of claims 56 and 57 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, is withdrawn in light of the amendment of the claims.
9. The rejection of claim 64 under 35 U.S.C. 112, second paragraph, as being indefinite for "optionally", is withdrawn in light of the amendment of the claims.
10. The rejection of claim 67 under 35 U.S.C. 112, second paragraph, as being indefinite for "optionally", is withdrawn in light of the amendment of the claims.

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11. The rejection of claims 65 and 68 under 35 U.S.C. 112, second paragraph, as being indefinite for dependence from rejected claims, is withdrawn.

### **Double Patenting**

12. Claim 45 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 44. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 45 is "A composition comprising at least one nucleic acid molecule of claim 44"  
The components of the composition of claim 45 are identical to the isolated or purified molecules of claim 48.

13. Claim 49 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 48. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 49 is "The composition of claim 48, wherein said composition is a vaccine." The components of the composition of claim 49 are identical to the components of the composition of claim 48.

14. Claim 65 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 64. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim

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to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 65 is "The composition of claim 64, wherein said composition is a vaccine." The components of the composition of claim 65 are identical to the components of the composition of claim 64.

15. Claim 68 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 67. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 68 is "The composition of claim 67, wherein said composition is a vaccine." The components of the composition of claim 68 are identical to the components of the composition of claim 67.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claim 54 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim depends from non-allowed claim 49.

### **Conclusion**

17. Claims 45, 49, 54, 65 and 68 are not allowed.

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18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Robert B. Mondesi (571)272-0956.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

December 9, 2009